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TESTIMONY

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BEFORE JOINT HEARING

HOUSE ENERGY AND COMMERCE COMMITTEE

SUBCOMMITTEE ON HEALTH

SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS WASTE

OCTOBER 20, 2005

**“COMPREHENSIVELY COMBATting METHAMPHETAMINE:
IMPACTS ON HEALTH AND THE ENVIRONMENT”**

TESTIMONY SUMMARY

1. The supermarket industry supports a comprehensive solution and strategy to effectively address the methamphetamine problem in the United States.
2. The Combat Meth Act of 2005 (S. 103 – H. R. 314) is too narrowly focused as it only addresses domestic meth production which is roughly about 20 percent of methamphetamine that is available in the United States.
3. The Combat Meth Act with its' Schedule V provisions will have a significant impact on consumers, causing hardship and inconvenience to families with children, residents who live in rural areas as well as the poor and the elderly who reside in inner city communities. These hardships will occur because Schedule V means that neighborhood grocery stores without a pharmacy will not be allowed to sell cough and cold medications that contain pseudoephedrine (PSE).
4. Schedule V will likely lead to higher prices for PSE products and will trigger “**by prescription only**” requirements in as many as 19 states. This will mean consumers would have to get a prescription from their doctor in order to purchase PSE products. As a result, a cough and cold product that normally sells for about \$6 at retail will now cost close to \$60 when you factor in the physician office visit charge.
5. The Food Marketing Institute (FMI) and its supermarket members support the Methamphetamine Epidemic Elimination Act (H. R. 3889). The supermarket industry further supports strong federal pre-emption language governing the sale of PSE products in order to facilitate retailer compliance.
6. The supermarket industry supports reasonable sales restrictions of PSE products, including limiting consumer access to PSE products by placing these medications behind a counter, such as a customer service counter where cigarettes are kept, that is not accessible to shoppers. Behind a counter eliminates the possibility of theft of PSE products just as effectively as Schedule V does.
7. The supermarket industry supports a federal exemption for pediatric products so that these medications can remain on store shelves.
8. The supermarket support a ban on Internet sales of PSE products as well as banning the sale of PSE products by flea markets.

INTRODUCTION

Chairman Deal and Chairman Gillmor. My name is Joseph R. Heerens, and I am Senior Vice President of Government Affairs for Marsh Supermarkets, Inc., headquartered in Indianapolis, Indiana. My statement today is on behalf of Marsh Supermarkets and the Food Marketing Institute (FMI). FMI is our national trade association, representing food retailers and wholesalers. While my company has no stores in Georgia, we do have thirteen (13) supermarkets in western and southwestern Ohio.

Thank you for holding this important hearing on the impact of methamphetamine on health and the environment, and solutions to address this very serious problem. The supermarket industry fully understands the magnitude of the problem, and we also know that legitimate cough and cold products containing pseudoephedrine (PSE) are used to manufacture meth.

According to law enforcement sources, legitimate PSE products, which are purchased or stolen from retail stores, account for approximately 20 percent of the methamphetamine that is domestically manufactured by so-called “mom and pop” meth cooks, whereas the lion’s share of meth in our country (approximately 80 percent) comes from super labs, many of which are located in other countries, such as Mexico. Regrettably, when domestic meth production is curtailed in a state because of enactment of a retail sales restriction law, Mexican drug gangs quickly fill the void with cheaper and more potent “crystal meth”. In other words, the problem does not go away; sometimes it gets worse.

Thus, it is the supermarket industry's position that to effectively address the methamphetamine problem, we need a comprehensive strategy and partnership between law enforcement, regulatory agencies, over-the-counter (OTC) manufacturers, and the retail community.

SCHEDULE V – SUPERMARKET CONCERNS

Our industry has serious concerns and misgivings over recent initiatives enacted into law at the state level as well as pending federal legislation (S. 103 – H. R. 314) that would impose stringent controls on precursor chemicals at the retail level. I am referring specifically to what is called the “Oklahoma Model” that relegates PSE products to Schedule V of the Controlled Substances Act. Under this approach, only retail pharmacies or retail stores that have a pharmacy department are allowed to sell cough and cold medicines, and these items must be kept behind a pharmacy counter.

Without question, Schedule V is very troublesome to our industry. That's because an overwhelming majority of grocery stores in the United States do not have a pharmacy department and would be precluded from selling PSE products. My company, for example, operates approximately 120 supermarkets in Indiana, Ohio and Illinois, but only 47 of our stores have a pharmacy department. Therefore, under the Schedule V – Oklahoma Model, more than 60 percent of our supermarkets would be prohibited from selling the pseudoephedrine cough and cold products that our customers expect us to carry to meet their shopping and health care needs.

Of our 47 stores that have a pharmacy department, general store hours are quite different from the pharmacy department's hours of operation. Most of our supermarkets are open 24-hours. In comparison, however, our pharmacy departments are typically open less than 12-hours on weekdays, and even more limited hours on weekends. Therefore, even if the store is open for business, if the pharmacy department is not open or if the pharmacist is not on duty, sales of PSE cough and cold products would not be permitted and our customers would have to shop elsewhere to meet their medication needs. That causes us great concern.

SCHEDULE V - IMPACT ON CONSUMERS

The bottom line result under a rigid Schedule V approach is a dramatic reduction in consumer access to cough and cold medications depending upon whether their local grocery store has a pharmacy department and the pharmacy department's hours of operation. For consumers living in rural areas or in the inner city, Schedule V can create major hardships if the nearest pharmacy is 15 to 20 miles from their home or if the person is elderly or poor and would have to rely on public transportation in order to get to a pharmacy to purchase a PSE medication.

FMI, along with the National Consumers League (NCL), gauged consumer opinion on sales restrictions of PSE products in a national survey released in April of 2005. What the FMI-NCL survey found is revealing. Forty-four (44%) percent of the 2,900 adult survey respondents felt that Schedule V would create a hardship for them, while 62

percent said they did not believe that restricting sales of PSE products to pharmacies is a reasonable measure for controlling meth production. In contrast, survey respondents were far more receptive to less severe restrictions than Schedule V, such as placing cough, cold and allergy products behind a counter, but not a pharmacy counter, or placing these items in a locked display case on the sales floor. Additionally, more than 80 percent of the survey respondents expressed support for limiting the quantity of such products that individuals can purchase, and 74 percent said it would be reasonable to restrict the age of purchasers.

For all of these reasons, the supermarket industry cannot support a Schedule V classification for cough and cold products containing pseudoephedrine. Schedule V poses significant problems for consumers who have legitimate needs for these medications, including reduced consumer access and hardship because their nearby neighborhood grocery store, which they visit 2.2 times each week, would not be allowed to sell these medicines. In addition, Schedule V may likely mean higher prices, as PSE products move from self-service to behind the pharmacy counter where the pharmacist, who is a highly salaried professional, will be required to ask for photo identification and have the customer sign a log book. Schedule V just isn't the right solution to this terrible problem.

COMBAT METH ACT OF 2005 IS FLAWED

In terms of pending federal legislation, the Combat Meth Act of 2005 (S. 103) approved by the Senate on September 9, 2005, as part of the FY 2006 Commerce Justice Appropriations bill, our industry firmly believes that this bill, and the House version (H. R. 314), are deficient, flawed, and in need of significant revisions. The following are the deficiencies and shortcomings we see in this legislation:

- S. 103 and H. R. 314 fail to provide for a national standard governing the sale of PSE products. Methamphetamine is a nationwide problem that needs a national solution. Regrettably, this legislation allows states and localities to establish different restrictions on these products, making compliance by retailers more difficult and complicated.
- Because these bills do not include strong federal pre-emption language, the requirement for a log book seems superfluous. That's because states and localities could have different transaction restrictions than what might be set forth in a federal law. Moreover, a log book raises significant privacy issues for many consumers.
- The Combat Meth Act of 2005 does not exempt liquids and gel caps even though every state Schedule V law regulating the sale of PSE products exempts these products.

- Unless the Combat Meth Act of 2005 is amended, the Schedule V provisions will trigger a **“by prescription only”** requirement in as many as 19 states. This would mean consumers would have to get a prescription from their doctor in order to purchase PSE products. As a result, a cough and cold product that normally sells for about \$6 at retail could now cost \$60 or more when you factor in the physician office visit charge.
- Moreover, the Schedule V provisions in S. 103 and H. R. 314 will force grocery warehouses and distribution centers that handle PSE products to apply for a Controlled Substances Registrant license from the Drug Enforcement Administration (DEA). This will entail higher licensing fees and new regulatory burdens for these facilities. Imposing Schedule V requirements and higher regulatory costs on warehouses and distribution centers makes no sense since these facilities are not a source of supply for the meth cooks.
- S. 103 and H. R. 314 are too narrow in their focus. These bills address only 20 percent of the problem in terms of domestic meth production. S. 103 and H. R. 314 do nothing to address the lion’s share of the problem, which is the estimated 80 percent of methamphetamine coming from the super labs, such as those located in Mexico.
- The Combat Meth Act of 2005 dramatically reduces consumer access to cough and cold products by limiting their sale to stores that have a pharmacy or a

pharmacy department. PSE products would have to be placed behind a pharmacy counter, and, due to space limitations in the pharmacy department, many retailers will not be able to carry and offer for sale the wide variety of PSE medications that their customers need. Moreover, because these products will be behind the pharmacy counter, consumers will no longer have the opportunity to read and compare products and product labels, and to otherwise engage in comparison shopping.

- S. 103, as passed by the Senate, limits purchasers to no more than 7.5 grams within a 30-day period. This arbitrary limit may be unfair to a large family with allergy problems or to a mother with several sick children at home who has a legitimate need for more than 7.5 grams within a 30-day period.
- The Combat Meth Act of 2005 does not adequately address the issue of Internet sales and flea markets. S. 103, as passed by the Senate, allows, but does not require, the Attorney General to promulgate regulations governing the sale of PSE products over the Internet. Furthermore, S. 103 and H. R. 314 have no provisions relating to flea markets which routinely sell PSE products that in many cases have been stolen from retail stores by organized theft gangs. Flea markets should be prohibited from selling PSE products unless these transient vendors have written authorization or appropriate business records from the manufacturer.

- The Combat Meth Act of 2005 allows stores without a pharmacy department to sell PSE products under very limited circumstances. Indeed, the exemption process is complicated and convoluted, involving both state and federal agencies, and very few exemptions will likely be granted and they probably will not be granted in a timely fashion. Individuals living in rural areas that do not have a pharmacy nearby will obviously be adversely affected by the Combat Meth Act and Schedule V.
- The implementation dates for Schedule V, as specified in S. 103, are unrealistic. For example, single ingredient PSE products would be placed in Schedule V ninety (90) days after enactment, and retailers would be required to maintain a log book. It is unlikely that the Department of Justice (DOJ) would be able to promulgate necessary regulations in 90 days to advise retailers on how to comply with the law.

SOLUTIONS TO THE METH PROBLEM

METHAMPHETAMINE EPIDEMIC ELIMINATION ACT

As I stated at the beginning of my testimony, the supermarket industry supports a comprehensive solution to the methamphetamine problem. This is reflected in FMI's recent endorsement of the Methamphetamine Epidemic Elimination Act (H. R. 3889) introduced by Representatives Mark Souder (R-IN), James Sensenbrenner (R-WI) and

Howard Coble (R-NC), along with more than 45 co-sponsors. Unlike the narrow focus of the Combat Meth Act, H. R. 3889 seeks to address the methamphetamine problem in a comprehensive manner. This bill is multi-pronged, with provisions that would establish domestic and international controls over precursor chemicals, while providing for more severe penalties for methamphetamine production, possession and trafficking.

In expressing our support for H. R. 3889 and a comprehensive approach for combating methamphetamine availability and abuse here in the United States, FMI members support the following:

- We support the elimination of the so-called “blister pack exemption”, and our industry also supports reasonable sales restrictions on PSE cough and cold products. In testimony to the House Judiciary Committee, FMI recommended a 6 gram limit per transaction.
- We support the adoption of strong federal pre-emption language governing the sale of PSE products in order to facilitate retailer compliance. Federal legislation should include language prohibiting local communities from implementing restrictions that are different from sales restrictions that have been established by a state.
- Our industry supports limiting consumer access to PSE products by placing these medications behind a counter that is not accessible to consumers, such as a service

counter where cigarettes are kept. Current Georgia state law requires PSE products be kept behind a counter or in a locked display case. FMI and its members do not support a Schedule V designation for PSE products.

- FMI members support a federal exemption for pediatric products so they can remain on store shelves. All indications are that meth cooks do not use pediatrics to make methamphetamine.
- We support a ban on Internet sales of precursor chemicals, as well as strict limits on mail order sales of PSE products.
- Our industry supports strict quotas and import restrictions on bulk chemicals of pseudoephedrine and ephedrine.
- We support a ban on the sale of PSE products and infant formula by flea markets, unless they have written authorization from the manufacturer or other appropriate business records. Flea markets are notorious for being major conduits for stolen merchandise in these two product categories.
- We support stronger penalties and fines, and tough enforcement, including “no bail” for individuals involved in the manufacturing, possession or sale of meth.

- We support making federal funds available to the states to help clean-up the aftermath of hazardous materials found at meth labs.

Chairman Deal, Chairman Gillmor, and Subcommittee Members, this concludes my statement. On behalf of FMI and its supermarket members, we very much appreciate the opportunity to present our views today on solutions to the meth problem.